

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #7	CCRB Case #: 201901583	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/14/2019 10:00 PM	Location of Incident: parking lot of § 87(2)(b)	Precinct: 50	18 Mo. SOL 8/14/2020	EO SOL 3/31/2021	
Date/Time CV Reported Thu, 02/14/2019 11:07 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/22/2019 11:14 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Musolino	20814	952041	050 PCT
2. SGT Vincent Caprino	03917	951589	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Vincent Caprino	Abuse: Sergeant Vincent Caprino stopped § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
B.POM Robert Musolino	Abuse: Police Officer Robert Musolino stopped § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
C.POM Robert Musolino	Abuse: Police Officer Robert Musolino frisked § 87(2)(b)	§ 87(2)(b)
D.POM Robert Musolino	Abuse: Police Officer Robert Musolino frisked § 87(2)(b)	§ 87(2)(b)
E.POM Robert Musolino	Abuse: Police Officer Robert Musolino searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
F.POM Robert Musolino	Abuse: Police Officer Robert Musolino took a photograph of § 87(2)(b)	§ 87(2)(b)
G.POM Robert Musolino	Abuse: Police Officer Robert Musolino took a photograph of § 87(2)(b)	§ 87(2)(b)
H.SGT Vincent Caprino	Abuse: Sergeant Vincent Caprino failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
I.POM Robert Musolino	Abuse: Police Officer Robert Musolino failed to provide § 87(2)(b) with a business card	§ 87(2)(b)

Case Summary

On February 14, 2019, § 87(2)(b) reported this complaint to IAB on behalf of her grandson § 87(2)(b) and his friend § 87(2)(b). § 87(2)(b) was not a witness to this incident. On February 22, 2019, this complaint was received at the CCRB via referral number 19-6810.

On February 14, 2019, at approximately 10:00 p.m., § 87(2)(b) and § 87(2)(b) were sitting in § 87(2)(b)'s car in the parking lot of § 87(2)(b) in the Bronx. Sgt. Vincent Caprino and PO Robert Musolino of the 50th Precinct approached them and ordered § 87(2)(b) and § 87(2)(b) out of the vehicle (**Allegations A and B: Abuse of Authority – § 87(2)(g)**). PO Musolino frisked § 87(2)(b) and § 87(2)(b) (**Allegations C and D: Abuse of Authority – § 87(2)(g)**). PO Musolino then searched § 87(2)(b)'s car (**Allegation E: Abuse of Authority – § 87(2)(g)**). PO Musolino took photographs of § 87(2)(b) and § 87(2)(b)'s identifications (**Allegation F and G: Abuse of Authority – § 87(2)(g)**). Sgt. Caprino and PO Musolino ended the encounter without providing business cards to § 87(2)(b) or § 87(2)(b) (**Allegation H and I: Abuse of Authority – § 87(2)(g)**).

There was no video of this incident. Sgt. Caprino and PO Musolino were equipped with Body Worn Cameras, but both failed to record the incident with their cameras. IAB investigated this incident under case number 19-00405 and issued Sgt. Caprino and PO Musolino both command disciplines for failure to record the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Vincent Caprino stopped § 87(2)(b) and § 87(2)(b)
Allegation (B) Abuse of Authority: Police Officer Robert Musolino stopped § 87(2)(b) and § 87(2)(b)

It is undisputed by Sgt. Caprino and PO Musolino that they stopped § 87(2)(b) and § 87(2)(b). § 87(2)(b) provided a brief phone statement to the CCRB, but was uncooperative with attempts to obtain a sworn statement about this incident. § 87(2)(b) was the only civilian who provided a sworn statement to the CCRB.

At 9:45 p.m. on February 14, 2019, an unidentified individual called 911 and reported that he had been the victim of a robbery at gunpoint. The caller stated that the robbery took place at 231st Street and Albany Crescent in the Bronx. He described the suspects as, “two young Hispanic guys” and that, “they’re wearing jeans, dark jacket.” He stated he chased them to Heath Avenue in his car and one of them ran into § 87(2)(b). He didn’t know where the other one went. (**BR 1**)

The radio dispatcher broadcast over the radio that there was a robbery in progress, at § 87(2)(b). The dispatcher added, “Two male Hispanics, jeans, black jacket, robbed a male at gunpoint.” Several units including, Sgt. Caprino and PO Musolino were assigned to respond to the call. According to the recording of the radio transmissions, immediately after the

first report by the dispatcher, Sgt. Caprino asked the dispatcher to repeat the description. The dispatcher then stated, "Two male Hispanics robbed a male at gunpoint. They're wearing jeans, black jacket. It says, one male ran inside the building at that location. Location may have EDP, possible domestic violence at location. Unknown where other perp fled to." Approximately two minutes later, Sgt. Caprino requested that the dispatcher call the 911 caller. The call however, went to voicemail, and there was no further information obtained from the 911 caller. The 911 dispatcher did not relay the caller's description of the suspects as "young." (**BR 2**)

§ 87(2)(b) stated that he and his friend § 87(2)(b) were working together as food deliverymen that evening using § 87(2)(b)'s vehicle – a silver Volkswagen Passat. § 87(2)(b) identifies himself as a black male. § 87(2)(b) was the driver while § 87(2)(b) sat in the passenger seat. Neither § 87(2)(b) nor § 87(2)(b) recalled how they were dressed that evening. They were not assigned to make any deliveries at the time when they pulled into the parking lot of § 87(2)(b) which is where § 87(2)(b) resided. § 87(2)(b) stated that as they approached the building, they saw several police officers and police vehicles depart from the front of the building. After § 87(2)(b) parked the car in the parking lot, the last police vehicle, which was unmarked, entered the parking lot and stopped, head-to-head with § 87(2)(b)'s vehicle. § 87(2)(b) stated that he and § 87(2)(b) were looking at their cell phones at the time. The two police officers exited their vehicle and approached § 87(2)(b)'s vehicle with flashlights on. § 87(2)(b) stated that he placed his cell phone on the dashboard and raised his hands voluntarily as the officers approached the vehicle. The officers ordered § 87(2)(b) and § 87(2)(b) to exit the vehicle, and they complied.

Sgt. Caprino and PO Musolino stated that they responded to the radio report of the gunpoint robbery by driving to § 87(2)(b). Sgt. Caprino and PO Musolino both stated that at the time they stopped § 87(2)(b) and § 87(2)(b) their only source of information about the robbery came from the police radio. Sgt. Caprino stated that § 87(2)(b) and § 87(2)(b) fit the "partial description" of the suspects in that they appeared to be two Hispanic males in front of the building described in the radio run. Sgt. Caprino stated the matching description was "partial" because he was only able to see their upper torsos and that their upper clothing matched the description. However, Sgt. Caprino recalled that they were wearing light blue shirts, while the radio run's only mention of an upper garment was "black jacket". PO Musolino stated during his CCRB interview that he no longer recalled what information he received over the radio but that while responding to the radio run, the description of the suspects were "fresh" in his mind and that he believed § 87(2)(b) and § 87(2)(b) fit those descriptions when he saw them. The stop, question and frisk reports generated by PO Musolino (**BR 3**) for this incident were consistent with the officers' statements, and indicated that the officers stopped § 87(2)(b) and § 87(2)(b) because they were believed to fit the descriptions of the suspects and they were located at the location reported. Sgt. Caprino and PO Musolino stated they approached § 87(2)(b)'s vehicle on foot. Neither of them mentioned § 87(2)(b) putting his arms up. They stated that they ordered § 87(2)(b) and § 87(2)(b) out of the vehicle and that both were compliant with their instructions.

To stop an individual, an officer must have reasonable suspicion that the individual is committing, has committed or is about to commit a crime People v. Debour, 40 N.Y.2d 210 [1976] (**BR 4**)

A radioed tip alone is insufficient to provide reasonable suspicion justifying intrusive police action, but may do so when considered in conjunction with other supportive facts. People v. Benjamin, 51 N.Y.2d 267 [1980] (**BR 12**)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Robert Musolino frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Robert Musolino frisked § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Robert Musolino searched the vehicle in which § 87(2)(b) **and** § 87(2)(b) **were occupants.**

§ 87(2)(b) stated that after he exited the vehicle, PO Musolino frisked his waist, torso, sleeves, pockets and pants legs, while Sgt. Caprino frisked § 87(2)(b) § 87(2)(b) and § 87(2)(b) were both led to the rear of the vehicle by Sgt. Caprino while PO Musolino searched inside § 87(2)(b) s vehicle. § 87(2)(b) stated he did not see how PO Musolino searched inside the vehicle. § 87(2)(b) did not mention any discussion with the officers regarding marijuana and did not mention being in possession of marijuana or the vehicle smelling of marijuana.

Sgt. Caprino and PO Musolino both stated that PO Musolino alone conducted frisks of § 87(2)(b) and § 87(2)(b) Sgt. Caprino stated that the frisk was a “quick pat down” for weapons, but did not recall the specific locations on § 87(2)(b) and § 87(2)(b) s bodies that were frisked.

Sgt. Caprino stated that when § 87(2)(b) opened the car door to exit, there was a smell of marijuana emanating from the vehicle. Sgt. Caprino did not recall whether there was any smoke coming from the vehicle. Sgt. Caprino also stated that at some point during his interaction with § 87(2)(b) and § 87(2)(b) § 87(2)(b) and § 87(2)(b) stated that they were preparing to smoke marijuana when they were stopped. Sgt. Caprino stated that he found the statement

credible due to the smell of marijuana he had detected and that the statement lessened his suspicion of them for the robbery, if indeed they were preparing to smoke marijuana instead of fleeing the location. PO Musolino also claimed to have smelled the odor of marijuana from § 87(2)(b)'s vehicle.

§ 87(2)(g)

The odor of marijuana, when detected by a police officer qualified to recognize it, is sufficient to constitute probable cause to search a vehicle and its occupants. People v. Chestnut, 43 A.D. 2d 260 [1974] (**BR 5**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Robert Musolino took a photograph of

§ 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Robert Musolino took a photograph of

§ 87(2)(b)

PO Musolino took photographs of § 87(2)(b) and § 87(2)(b)'s identifications using his department-issued smartphone (**BR 11**). Sgt. Caprino stated that this was done to help expedite the recording of § 87(2)(b) and § 87(2)(b)'s information in order to fill out paperwork later, allowing them to continue their canvass for the robbery suspects.

According to NYPD Operations Order number 20 (**BR 6**), police officers are permitted, but not required to use department issued smartphones to photograph or video record “all enforcement encounters where there is at least reasonable suspicion the person(s) has committed, is committing, or may be involved in criminal activity consistent with Patrol Guide 212-11, ‘Stop and Frisk.’”

§ 87(2)(g)

Allegation (H) Abuse of Authority: Sergeant Vincent Caprino failed to provide § 87(2)(b) with a business card.

Allegation (I) Abuse of Authority: Police Officer Robert Musolino failed to provide § 87(2)(b) with a business card

Both Sgt. Caprino and PO Musolino admitted that they did not provide any business cards to § 87(2)(b) or § 87(2)(b). Sgt. Caprino cited the need to continue their search for the robbery suspect as an “exigent circumstance” which precluded them from remaining on scene to provide business cards. Similarly, PO Musolino stated it was “not feasible” to provide business cards due to the need to continue their search for the robbery suspects. Both Sgt. Caprino and PO Musolino admitted that they knew they would otherwise have been required to provide business cards to § 87(2)(b) and § 87(2)(b). After leaving § 87(2)(b) and § 87(2)(b), Sgt. Caprino and PO § 87(2)(b) continued their investigation by canvassing for video footage of the robbery. Neither of them identified the robbery suspect that night and the suspect or suspects were later apprehended by other police officers on another day.

NYC Administrative Code 14-174 states that an officer shall offer a business card to a person at the conclusion of any law enforcement activity that does not result in an arrest or a summons. The law defines “law enforcement activities” to include noncustodial questioning of individuals suspected of criminal activity, frisks, and searches of vehicles. An officer is not required to provide a business card when “Exigent circumstances require immediate action by such officer.” Or when, “Such officer reasonably expects that he or she or any other person is in danger of physical injury or that there is an imminent risk of damage to property, or to forestall the imminent escape of a suspect or imminent potential destruction of evidence.” (BR 7)

§ 87(2)(g)
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Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to three other CCRB complaints and has been named as a victim in two allegations (BR 8):
 - § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 8).
- Sgt. Vincent Caprino has been a member-of-service for seven years and has been a subject in three other CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)

- PO Robert Musolino has been a member-of-service for seven years and has been a subject in three other CCRB complaints and eight allegations, of which two were substantiated:
 - 201600021 involved substantiated allegations of frisk and search of person against PO Musolino. The Board recommended formalized training and the NYPD imposed formalized training.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of July 8, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**BR 9**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 7

Investigator:	_____	<u>SI Simon Wang</u>	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date